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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/758,033	01/10/2001	Nobuhiro Komata	SCEI 17.966	8282
<div>7590 07/28/2009 Katten Muchin Zavis Rosenman 575 Madison Avenue New York, NY 10022-2585</div>				
EXAMINER				
DHARIA, PRABODH M				
ART UNIT		PAPER NUMBER		
2629				
MAIL DATE		DELIVERY MODE		
07/28/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

09/758,033

**Applicant(s)**

KOMATA, NOBUHIRO

**Examiner**

PRABODH M. DHARIA

**Art Unit**

2629

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/C2)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### ***Response to Amendment***

1. The amendment filed 05-20-2009 does not introduce any new matter into the disclosure. The added material is supported by the original disclosure. Applicant has amended claims 1, 2, and 4 and added new claims 37 and 38 to overcome prior art rejection.
2. **Status:** Please all the replies and correspondence should be addressed to examiner's new art unit 2629. Receipt is acknowledged of papers submitted 02-22-2008 under amendments and new claims 37, 38 which, have been placed of record in the file. Claims 1-38 are pending in this office action.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1-38 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1, 2 of U.S. Patent No. 6,524,187 and Claims 1-5 of the patent's US PG-Publication Number 2001/0008851. Although the conflicting claims are not identical, they are not patentably distinct from each other because the subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent and the patent's US PG-Publication Number 2001/0008851. Since the patent; the patent's US PG-Publication Number 2001/0008851 and the application are claiming common subject matter, as follows: Comparison of Instant application Claims 1-38 to Claims 1, 2 of U.S. Patent No. 6,521,487 and the patent's US PG-Publication Number 2001/0008851;

<b>Instant Application Number</b> <b>09/758033;</b>	<b>Parent US patent Number</b> <b>US 6,524,187 B2</b> <b>Application Number 09,758,045</b> <b>PGPUB US 2001/0008851A1</b>
17. A computer system comprising: a controller that gives instructions to running software depending on a pushing pressure of a user on a control element connected to a pressure-sensitive device of said controller; means for measuring a maximum user	2. A method, using a computer to execute a game program wherein characters perform stipulated actions by taking as instructions an output from a controller which has pressure-sensitive means, the method comprising the steps

<p>pressure-sensing value rate of change which is the most rapid pushing pressure of the user; means for acquiring a maximum game pressure-sensing value rate of change set by said software, and correction means for making said maximum user pressure-sensing value rate of change to correspond to said maximum game pressure-sensing value rate of change, and calculating intermediate values until the maximum user pressure-sensing value rate of change is reached proportionally corresponding to the game pressure-sensing value rate of change; wherein the user pressure-sensing value rate of change which is a pushing speed of the user on the control element is corrected by said correction means and used in said software.</p> <p>18. The correction means has a correction table for correcting said user pressure-sensing value rate of change to correspond to said game pressure-sensing value rate of change.</p> <p>19. The correction table is prepared based on a</p>	<p>of: sensing a pushing pressure of a user on the controller by said pressure-sensitive means and generating a pressure-sensing output corresponding to said pushing pressure; comparing the point in time at which the maximum value of said pressure-sensing signal was generated with a standard timing for said stipulated actions determined in advance in said game program, and generating a time differential; and evaluating a stipulated action that a character had performed from the maximum value of said pressure-sensing signal and said time differential.</p> <p>US PGPUB 2001/0008851</p> <p>1. A recording medium on which is recorded a computer-readable and executable game software program that includes an element of applying force that acts on objects, which includes a program that performs processing by taking as instructions an output from a controller which has pressure-sensitive means, wherein said software program includes a</p>
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<p>stipulated program.</p> <p>20. The correction table is prepared based on predetermined calculations.</p>	<p>processing program that applies force that acts on objects depending on the output of said controller.</p> <p>2. A computer which is able to execute a game program wherein characters perform stipulated actions by taking as instructions an output from a controller which has pressure-sensitive means, comprising: means for sensing a pushing pressure of a user on the controller by said pressure-sensitive means and generating a pressure-sensing output corresponding to said pushing pressure; means for comparing the point in time at which the maximum value of said pressure-sensing signal was generated with a standard timing for said stipulated actions determined in advance in said game program, and generating a time differential, and means for evaluating a stipulated action that a character had performed from the maximum value of said pressure-sensing signal and said time differential.</p>
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Note the comparison of claims 17-20 of instant application, to avoid 101 statutory double patenting rejections the claims limitation by curtailing the details and language has been changed. However, instant application claim 17-20 limitations are described in independent claim 2 of the patent and patent's PGPUB 2001/0008851 Claims 1 and 2. They both are claiming "In order to minimize differences in a pushing speed of a user pushing control elements of a controller in, for example, an entertaining system, arising from differences in the body weights of users, the gives instructions to a computer running software depending on the pushing pressure of the user on the control element connected to a pressure-sensitive device of the controller. The controller is set up to instruct the user to push the control element with at least a maximum strength. The value obtained when the control element is pushed, is stored as the maximum value. Based on the maximum value and a pressure-sensing value table defined in software or various pressure-sensing values, a new pressure-sensing value table or various new pressure-sensing values are generated".

Further other Claims 1-16 and 21-38 of instant application claims same or similar limitation as patented application claims 1 and 2 and patent's PGPUB application 2001/0008851 claims 1-5 claim per claim basis. Remark dated 05-20-2009 applicant recites "Independent claims 2, 4, 8, 12, 17, 21, 24, 30, and 34-36 include feature similar to those discussed above in regard to claim 1".

#### ***Response to Arguments***

5. Applicant's arguments, see remark, filed 05-20-2009, with respect to the rejection(s) of Claims 1-5 and 8 under 35 U.S.C. 102(e); Claims 6, 7, 9-36 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However,

upon further consideration, a new ground(s) of rejection is made in view of Komata; Nobuhiro (US 6524187 B2).

***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Komata; Nobuhiro (US 6771251 B2) Electronic equipment, recording medium and method for changing parameter settings of the electronic equipment or computer.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRABODH M. DHARIA whose telephone number is (571)272-7668. The examiner can normally be reached on M-F 8-30AM to 5PM.

8. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

9. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 2629

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

/Prabodh M Dharia/

Primary Examiner,

Art Unit 2629

July 25,, 2009